

PATENT
1209-0121P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicants: Ulf LANDEGREN Conf: 7960
Serial No.: 08/981,310 Group: 1641
Filed: December 16, 1997 Examiner: V. Portner
Re: ULTRASENSITIVE IMMUNOASSAYS

PETITION SUBMITTED UNDER 37 C.F.R. §1.181

Assistant Commissioner for Patents
Washington, DC 20231

November 5, 2002

Sir:

The present petition is respectfully submitted under 37 C.F.R. §1.181 and M.P.E.P. §2163.06 in connection with the above-identified application.

In an Amendment filed on May 15, 2002, Applicants amended the specification on page 3, to insert the following paragraph between the third and fourth paragraphs.

--The present invention encompasses immunological test kits wherein the affinity reagents are lectins, receptors, single chain antibodies, cofactors or nucleic acids.--

Support for the above amendment was based on claim 3 of the originally filed specification which recited.

An immunological test kit according to claim 1, characterized in that the affinity reagents are lectins, receptors, single chain antibodies, cofactors and nucleic acids.

Thus, the amendment to the specification presented a nearly identical recitation of original claim 3. The only

notable difference from original claim 3, is the recitation of "lectins, receptors, single chain antibodies, cofactors or nucleic acids" rather than "lectins, receptors, single chain antibodies, cofactors and nucleic acids." However, given that the immunoassay only calls for three affinity reagents and claim 3 recited five possible affinity reagents, it would be readily evident that lectins, receptors, single chain antibodies, cofactors and nucleic acids could not all be simultaneously present at in the assay as the first through third affinity reagents. Applicants believe that change from "and" to "or" more clearly stated the evident intent of the claim 3 that the three affinity reagents may each individually be a lectin, receptor, single chain antibody, cofactor or nucleic acid.

In the Advisory Action of June 19, 2002, the Examiner refused to enter the above-amendment to the specification on the grounds that it constituted New Matter. Applicants petition the withdrawal of the Examiner's refusal to enter the amendment to the specification as New Matter.

Under M.P.E.P. §2163.06, an objection and requirement to delete new matter is subject to supervisory review by petition under 37 CFR 1.181. As such, Applicants believe the refusal to enter the amendment to be a properly petitionable matter.

As discussed above, the proposed amendment to the specification is supported by original claim 3. M.P.E.P. §2163.06 states,

The claims as filed in the original specification are part of the disclosure and therefore, if an application as originally filed contains a claim disclosing material not disclosed in the remainder of the specification, the applicant may amend the specification to include the claimed subject matter. *In re Benno*, 768 F.2d 1340, 226 USPQ 683 (Fed. Cir. 1985).

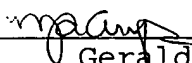
As such, it is not New Matter to amend the specification to incorporate claim 3. Withdrawal of the finding of New Matter is therefore respectfully requested.

The required petition fee of \$130.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By: 
Gerald M. Murphy, Jr.
Reg. No. 28,977

MaryAnne Armstrong, PhD
Reg. No. 40,069

P.O. Box 747
Falls Church, VA 22040-0747
703-205-8000

GMM/MAA/csm